

August 21, 2008 DRAFT WCA Rule Sections 1-4

Below are the first four draft sections of the re-formatted WCA Rule. They are:

1. Purpose and Scope
2. Local Government Unit Duties and Procedures
3. Application Procedures
4. Wetland Boundary, No-Loss, and Exemption Standards

These are in draft form and will still change as the rulemaking process progresses and we continue to address comments received. However, many changes have been made and the new order of the re-structured rule is taking shape.

Key:

Plain black = original and unchanged text

Red underline = added text

~~Red-strikeout~~ = deleted text

~~Grey background with strikeout~~ = text was relocated to a different location in the rule

Yellow background = text was moved to that location from a different location in the rule

Bold black italic = note to identify new or previous location of text

Note: The text boxes and explanations shown in previous rule drafts are not included.

PURPOSE AND DEFINITIONS SCOPE

8420.0100 PURPOSE.

This chapter implements the regulatory provisions of the Wetland Conservation Act of 1991, Laws 1991, chapter 354, as amended by Laws 1993, chapter 175; Laws 1994, chapter 627; Laws 1996, chapter 462; Laws 2000, chapter 382; ~~and~~ Laws 2001, chapter 146; Laws 2002, chapter 220; Laws 2003, chapter 128; Laws 2004, chapters 221 and 255; and Laws 2007, chapters 57 and 131. This chapter shall be interpreted to implement the purpose of the act, which is to:

- A. achieve no net loss in the quantity, quality, and biological diversity of Minnesota's existing wetlands;
- B. increase the quantity, quality, and biological diversity of Minnesota's wetlands by restoring or enhancing diminished or drained wetlands;
- C. avoid direct or indirect impacts from activities that destroy or diminish the quantity, quality, and biological diversity of wetlands; and
- D. replace wetland values where avoidance of activity is not feasible and prudent.

~~8420.0102 INTRODUCTION.~~

The regulatory provisions of the Wetland Conservation Act ~~achieves advance~~ the purpose in this part ~~8420.0100~~ by requiring persons proposing to impact a wetland ~~by draining, excavating, or filling~~ to first, attempt to avoid the impact; second, attempt to minimize the impact; and finally, replace any impacted area with another wetland of at least equal function and value. As specified in greater detail in part 8420.0122, certain projects are exempt from the requirement for a replacement plan under the Wetland Conservation Act.

The Wetland Conservation Act is administered by local government units with oversight provided by the Board of Water and Soil Resources. Enforcement of the act is provided by Department of Natural Resources conservation officers and other peace officers. The Wetland Conservation Act became effective on January 1, 1992, and this chapter and portions of Minnesota Statutes, chapters 103A, 103B, 103E, 103F, and 103G, govern its implementation. The public is encouraged to contact their local government unit or soil and water conservation district for general information on wetlands and the

interpretation of this chapter. ~~This part is for general introductory information only. The other parts of this chapter shall control over this part.~~

8420.0103 WETLAND FUNCTIONS FOR DETERMINING PUBLIC VALUES.

The entire part 8420.0103 was relocated to the Replacement Standards section and edited there.

8420.0105 SCOPE.

Wetlands must not be ~~drained, excavated, or filled wholly or partially impacted~~ unless replaced by restoring or creating wetland areas of at least equal public value. This chapter regulates ~~the draining or filling of wetlands, and~~ excavation in ~~the permanently and semipermanently flooded areas of type 3, 4, or 5 wetlands, and in all wetland types~~ if ~~the excavation includes results in~~ filling, ~~or draining, or a loss of wetland quantity, quality, or biological diversity results in conversion to nonwetland.~~

This chapter does not prevent the use of the bed of wetlands for pasture or cropland during dry periods if dikes, ditches, tile lines, or buildings are not constructed ~~or improved~~ and the agricultural use does not ~~result in the drainage of impact~~ the wetlands. ~~This chapter does not prevent filling a wetland to accommodate wheeled booms on irrigation devices if the fill does not impede normal drainage. C. activities in a wetland conducted as part of~~ This chapter does not regulate normal farming practices ~~in a wetland. For purposes of this item, "normal farming practices" means farming, silvicultural, grazing, and ranching activities such as plowing, seeding, cultivating, and harvesting for the production of feed, food, and fiber products, but does not include activities that result in the draining of impact wetlands;~~

The above language was relocated here from the Agricultural Activities exemption.

This chapter does not prevent control of noxious weeds if the control does not ~~drain or fill impact~~ the wetland.

~~This chapter does not regulate impacts to incidental wetlands. Incidental wetlands are W~~Wetland areas ~~may be drained, excavated, or filled if that the landowner can show demonstrate, to the satisfaction of the local government unit, that the wetland was were~~ created ~~in non-wetland areas~~ solely by actions, the purpose of which was not to create the wetland. ~~Incidental wetlands include drainage ditches, impoundments, or excavations constructed in non-wetlands solely for the purpose of effluent treatment, containment of waste material, storm water retention, drainage, soil and water conservation practices, and water quality improvements, and not as part of a wetland replacement process that may, over time, take on wetland characteristics, are also exempt.~~

The preceding two sentences were relocated here from the previous Incidental exemption.

This chapter does not apply to the public waters and public waters wetlands as defined in Minnesota Statutes, section [103G.005](#), subdivisions 15 and 15a, which have been inventoried by the commissioner of natural resources according to Minnesota Statutes, section [103G.201](#), except that:

- A. for projects affecting public waters wetlands, and for public transportation projects affecting the wetland areas of public waters, when the commissioner waives the requirement for a public waters work permit consistent with chapter 6115, the local government unit shall make replacement, banking, wetland boundary, wetland type, no-loss, public road project notification, or exemption determinations; or
- B. for projects affecting both public waters and wetlands, the local government unit may, by written agreement with the commissioner, waive the requirement for a replacement plan, no-loss, or exemption determination if a public waters work permit is required and the commissioner includes the provisions of this chapter in the public waters work permit.

This chapter is in addition to other regulations including those of the United States Army Corps of Engineers, United States Department of Agriculture, Minnesota state agencies, watershed districts, and local governments.

This chapter does not apply to peat mining as defined in Minnesota Statutes, section [93.461](#), which is subject to the permit to mine and reclamation requirements of Minnesota Statutes, sections [93.44](#) to [93.51](#), and the rules of the commissioner adopted under those sections.

This chapter does not require state agencies to obtain local government unit approvals. ~~However, state agencies shall coordinate with local government units when conducting activities in wetlands within the jurisdiction of the local government unit. The state agencies shall follow the same sequencing and replacement requirements as prescribed by this chapter.~~

The preceding two sentences were relocated to the Determining Local Government Unit; Duties part.

In addition to the provisions of this chapter, governmental decisions on ~~draining, excavating, and filling of~~ impacting wetlands are subject to Minnesota Statutes, chapters 116B and 116D, which provide that an action which is likely to have material adverse effects on natural resources must not be allowed if there is a feasible and prudent alternative consistent with the requirements of the public health, safety, and welfare and the state's paramount concern for the protection of its natural resources. Economic considerations alone do not justify adversely effective actions.

8420.0545 PRESETTLEMENT WETLAND ACRES AND AREAS.

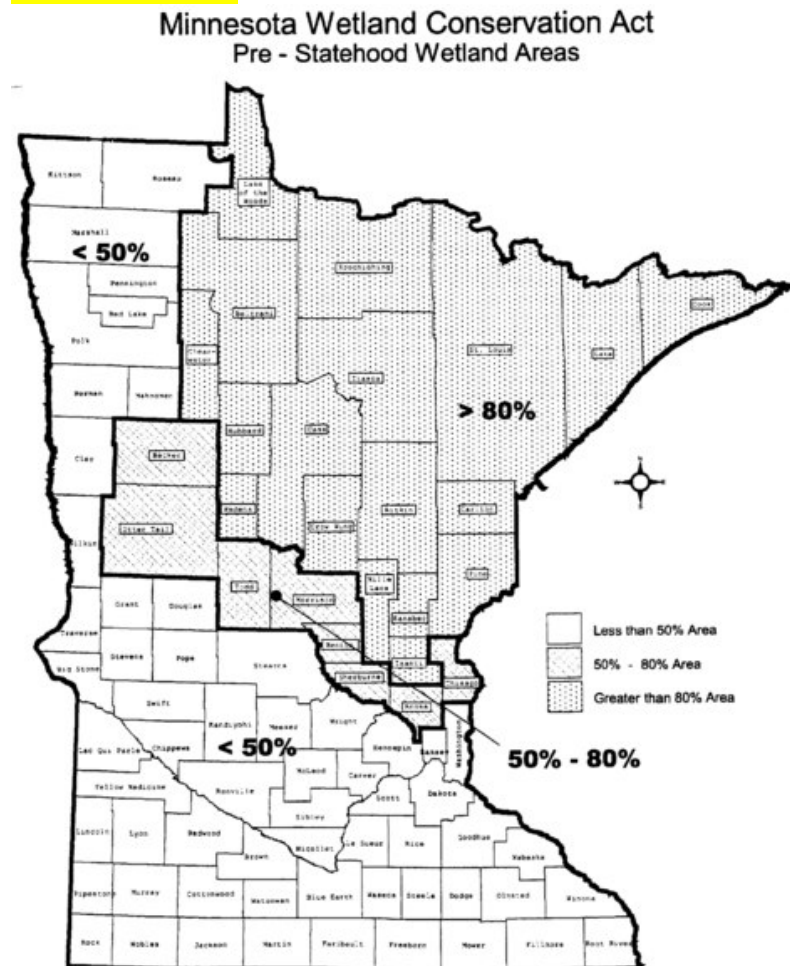
Subp. 1. County classification.

A. For purposes of parts 8420.0540 to 8420.0549, the following counties are greater than 80 percent areas: Aitkin; Beltrami; Carlton; Cass; Clearwater; Cook; Crow Wing; Hubbard; Isanti; Itasca; Kanabec; Koochiching; Lake; Lake of the Woods; Mille Lacs; Pine; St. Louis; and Wadena.

B. For purposes of parts 8420.0540 to 8420.0549, the following counties are less than 50 percent areas: Big Stone; Blue Earth; Brown; Carver; Chippewa; Clay; Cottonwood; Dakota; Dodge; Douglas; Faribault; Fillmore; Freeborn; Goodhue; Grant; Hennepin; Houston; Jackson; Kandiyohi; Kittson; Lac Qui Parle; Le Sueur; Lincoln; Lyon; Mahanomen; Marshall; Martin; McLeod; Meeker; Mower; Murray; Nicollet; Nobles; Norman; Olmsted; Pennington; Pipestone; Polk; Pope; Ramsey; Red Lake; Redwood; Renville; Rice; Rock; Roseau; Scott; Sibley; Stearns; Steele; Stevens; Swift; Traverse; Wabasha; Waseca; Washington; Watonwan; Wilkin; Winona; Wright; and Yellow Medicine.

C. For purposes of parts 8420.0540 to 8420.0549, the following counties are 50 to 80 percent areas: Anoka; Becker; Benton; Chisago; Morrison; Otter Tail; Sherburne; and Todd.

WETLAND AREAS



Subp. 4 2. County or watershed reclassification.

A. A local government unit may request the board to reclassify a county or major watershed wholly or partly within its jurisdiction on the basis of its percentage of presettlement wetlands remaining. After receipt of satisfactory documentation from the local government, the board ~~shall~~ **must** change the classification of a county or major watershed. If requested by the local government unit, the board must assist in developing the documentation. Within 30 days of its action to approve a change of wetland classifications, the board ~~shall~~ **must** publish a notice of the change in the Environmental Quality Board Monitor.

B. One hundred citizens who reside within the jurisdiction of the local government unit may request the local government unit to reclassify a county or major watershed on the basis of its percentage of presettlement wetlands remaining. In support of their petition, the citizens ~~shall~~ **must** provide satisfactory documentation to the local government unit. The local government unit ~~shall~~ **must** consider the petition and forward the request to the board or provide a reason why the petition is denied.

Subpart 2, County or watershed reclassification, was relocated here from the previous .0250 Appeals part.

~~8420.0110 DEFINITIONS.~~

The entire 8420.0110 was relocated to the Definitions section at the end of the rule.

~~8420.0112 INCORPORATION BY REFERENCE.~~

The entire 8420.0112 was relocated to the Definitions section at the end of the rule.

~~8420.0115 SCOPE OF EXEMPTION STANDARDS.~~

The entire 8420.0115 was relocated to Subpart 1 of the Exemption Standards part in the Wetland Boundary, No-Loss, and Exemption Standards section and edited there.

~~8420.0122 EXEMPTION STANDARDS.~~

The entire 8420.0122 was relocated to the Wetland Boundary, No-Loss, and Exemption Standards section and edited there.

LOCAL GOVERNMENT UNIT DUTIES AND PROCEDURES

8420.0200 DETERMINING LOCAL GOVERNMENT UNIT; DUTIES.

Subpart 1. ~~Determinations of Determining~~ **Determining local government unit.** The local government unit responsible for making ~~exemption, wetland type, wetland boundary, and no-loss determinations and approving replacement and wetland banking plans~~ decisions shall must be determined according to items A to ~~DE~~. The board will resolve all questions as to which government entity is the responsible authority, applying the guidelines in items A to ~~D H~~.

A. Outside the seven-county metropolitan area, the local government unit is the county or city in which the ~~drain or fill~~ activity is located, or its delegate.

B. In the seven-county metropolitan area, the local government unit is the city, town, or water management organization regulating surface-water-related matters in the area in which the ~~drain or fill~~ activity is located, or its delegate. The watershed management plan adopted under Minnesota Statutes, section 103B.231, and related board rules will normally indicate the appropriate local government unit. Lacking an indication, the local government unit must be the city, town, or its delegate.

C. Delegation of implementation of this chapter and the act from a county, city, or town, as applicable according to item A or B, to a soil and water conservation district or other entity must occur by the passage of resolutions by both parties. The delegation becomes effective when resolutions have been passed by both parties, or on the date specified in the resolutions, whichever is later. Both parties must provide notice to the board, the commissioner, and the soil and water conservation district within 15

business days of adoption of the resolution. The notice must include a copy of the resolution and a description of the applicable geographic area.

CD. If the activity ~~in a wetland~~ is located in two jurisdictions, the local government unit is the one exercising zoning authority over the project or if both have zoning authority, the one in which most of the wetland ~~loss impacts~~ will occur. If no zoning permits are required, the local government unit is the one in which most of the wetland ~~loss impacts~~ will occur. If an activity will affect wetlands in more than one local government unit, the board ~~will~~ **may** coordinate the project review to ensure consistency and consensus among the local government units involved. Local government units may maintain separate jurisdiction if mutually agreed upon.

E. For ~~wetland~~ replacement plans ~~involving more than one where the replacement will occur in a different local government unit than the impact~~, approval of all local government units involved or as specified in part 8420.0200XXXX ~~shall will~~ constitute final approval of the replacement plan and is required before the project may proceed. The local government unit with jurisdiction for the impact site must approve all components of the replacement plan, following the procedures in parts 8420.0500XXXX to 8420.0630XXXX. The local government unit with jurisdiction for the replacement site ~~shall~~ **must** limit the review to evaluation of the replacement site as in parts 8420.0540XXXX to 8420.0630XXXX and make a decision accordingly. If the replacement site is located in more than one local government unit, then the local government unit with jurisdiction for the replacement site is the one in which most of the replacement wetland area occurs.

As part of the approval of the replacement plan, the local government unit with jurisdiction for the replacement site assumes responsibility for ensuring compliance with monitoring provisions according to parts 8420.0600XXXX to 8420.0630XXXX. The local government unit with jurisdiction for the replacement site may enter into joint powers agreements with a local government unit with jurisdiction for the impact site, assess fees, or develop other procedures considered necessary to facilitate the process. *The preceding two paragraphs were relocated here from the previous 8420.0230 subpart 2.*

F. For banking projects in more than one jurisdiction, the local government unit is the one in which most of the replacement wetland area occurs.

G. In instances where the activity or replacement occur in multiple jurisdictions, the local government unit with decision-making authority must coordinate with the other local government units.

~~D H.~~ ~~In those cases where an activity will occur~~ **For activities** on state land, the local government unit is the state agency, or the agency's designee, with administrative responsibility for that land. **However,** state agencies ~~shall must~~ coordinate with local government units ~~that would otherwise have jurisdiction~~ when conducting activities in wetlands ~~within the jurisdiction of the local government unit~~. The state agencies ~~shall must~~ follow the ~~same sequencing and replacement requirements as procedures and standards~~ prescribed by this chapter. *The preceding two sentences were relocated here from Scope. The board will resolve all questions as to which government entity is the responsible authority, applying the guidelines in items A to D. The preceding sentence was relocated to the first paragraph of this subpart.*

Notwithstanding items A to ~~D~~ **G**, the Department of Natural Resources ~~shall be~~ **is** the approving authority for activities associated with projects requiring permits to mine under Minnesota Statutes, section 93.481, and for projects affecting calcareous fens.

Subp. 2. Local government unit duties.

A. Each local government unit of the state, except tribal lands, ~~shall~~ **must** acknowledge, in writing, to the board that it is assuming its responsibilities under this chapter and the act.

AB. A local government unit must provide knowledgeable and trained staff to manage the program or secure a qualified delegate. Otherwise, the board may declare a moratorium as prescribed in part [8420.0260](#) or take other appropriate legal action to assure proper implementation and compliance with

this chapter. The board may establish standards and requirements for training, experience, and certification.

~~BC.~~ The local government unit may, through resolution, rule, or ordinance, place ~~the decision-making authority for exemption, no-loss, wetland boundary and type, replacement plan, and wetland banking determinations~~ with local government unit staff according to procedures it establishes. For final ~~determinations~~ decisions made by staff, the local government unit must establish a local appeal process that includes an evidentiary public hearing before appointed or elected officials. ~~The determination of staff becomes final if not appealed to the local government unit within 30 days after the date on which the decision is mailed to those required to receive notice of the decision. Notwithstanding the time frames of Minnesota Statutes, section 15.99, or any other law to the contrary, the local government unit must make a ruling within 30 days from the date of the filing of the appeal, unless the appellant and local government unit mutually agree, in writing, to an extension of time beyond the 30 days. Appeal of a final determination made by staff may be made by the landowner, by any of those required to receive notice of the decision, or by 100 residents of the county in which a majority of the wetland is located.~~

The above language was relocated to the Appeals part in the Appeals, Compensation, and Enforcement section.

~~D.~~ An application submitted under this chapter must not be approved unless entitlement thereto is established by a fair preponderance of the evidence. For each finding of fact and recommendation included in a written technical evaluation panel report that is not adopted by the local government unit, the local government unit must provide detailed reasons for rejecting the finding of fact or recommendation in its record of decision, otherwise the local government unit has not sufficiently considered the technical evaluation panel report.

~~G.~~ The notice of decision mailed by the local government unit must include information on the process and time frames to appeal the decision of the local government unit.

The preceding sentence was relocated to the Application and Decision Noticing part of this section.

~~E.~~ The local government unit may evaluate evidence for an exemption or no-loss without making a determination decision. *The preceding sentence was relocated here from the previous 8420.0210.*

~~F.~~ The local government unit must retain a record of all decisions for a minimum of 10 years after all applicable requirements and conditions pertaining to the project are fulfilled.

~~DG.~~ The local government unit and soil and water conservation district may charge processing fees in amounts not greater than are necessary to cover the reasonable costs of implementing this chapter and for technical and administrative assistance to landowners in processing other applications for projects affecting wetlands.

~~H.~~ The local government unit must annually report information to the board regarding implementation of the act in a format and time period provided by the board. Failure to comply with the board's reporting requirements may subject the local government to penalty under part 8420.0260.

8420.0260 PENALTY FOR LOCAL GOVERNMENT UNIT FAILURE TO APPLY LAW. Subp. 3. **Procedures and penalty for local government unit failure to apply law.**

~~A.~~ Each local government unit of the state, except tribal lands, shall acknowledge, in writing, to the board that it is assuming its responsibilities under this chapter and the act. Local government units from which an affirmative response is not received shall be given written notice by the board that there is a 60-day moratorium in the local government unit's jurisdiction on exemption, wetland boundary, wetland type, no-loss, replacement plan, and banking determinations. If a local government unit fails to acknowledge in writing its responsibilities under this chapter and the act, as required in subpart 2, the board will impose a 60-day moratorium in the local government unit's jurisdiction in making decisions and implementing this chapter and the act. The board will notify the local government unit in writing of the start and end dates of the moratorium. The board shall must end the moratorium within the 60 days upon written agreement by

the local government unit that it will assume, and is currently capable of implementing, its duties under this chapter and the act. If at the end of the initial 60-day moratorium a written agreement has not been made for the local government unit to apply the law, the board ~~can~~ may extend the moratorium until the local government unit agrees to apply the law.

The first sentence of item A above was relocated to Subpart 2 item A.

B. If the board has information that a local government unit is not following this chapter or the act in making ~~exemption, no-loss, replacement plan, public road project notice reviews, wetland boundary, wetland type, or banking determinations decisions;~~ or if the local government unit does not have knowledgeable and trained staff with experience in wetland water resource management as required in part XXXX; or if the local government unit fails to comply with the board's reporting requirements, the board ~~shall~~ must notify the local government unit in writing of its concerns. The local government unit ~~shall~~ must respond in writing within 60 days of being notified by the board. If not satisfied with the local government unit's written response, or none is received, the board ~~shall~~ must ask the local government unit to appear at a hearing before the board to discuss the matter. The board may invite comments from other local governments or state and federal agencies. If the board determines at the hearing, that corrective action is necessary, the board ~~shall~~ must write the local government unit directing specific corrective action to occur within 60 days of receiving the board's decision. The notice ~~shall~~ must explain the reason for the action.

C. If, after the 60-day period described in this part the local government unit has not corrected the problem to the satisfaction of the board, the board ~~shall~~ must declare a moratorium as prescribed in item A or take other appropriate legal action to ensure compliance.

D. When a moratorium is declared as prescribed in items A or C, a decision cannot be made on applications because a local government unit authorized to implement this chapter does not exist while the moratorium is in effect. Applications pending a local government unit decision when a moratorium is declared must be returned by the local government unit to the applicant within 15 days of the moratorium being placed in effect. Applications submitted while a moratorium is in effect must be returned by the local government unit to the applicant with an explanation and within 15 days of the local government unit's receipt of the application.

8420.0245XXXX OTHER LOCAL GOVERNMENT UNIT WETLAND RULES AND ORDINANCES.

This chapter and the act provide minimum standards. Local government units may, through ordinance or rule, require landowners to submit an application and obtain approval to be eligible for an exemption or for temporary impacts or excavation activities in a wetland that may result in a no-loss. Local government units may require more procedures and more wetland protection, but not less.

8420.0240XXXX TECHNICAL EVALUATION PANEL PROCEDURES.

A. For each local government unit, there is a technical evaluation panel. Panel membership consists of at least three persons: a technical professional employee of the board, a technical professional employee of the soil and water conservation district of the county in which the activity is occurring, and a technical professional with expertise in wetland water resource management appointed by the local government unit. For projects affecting public waters, ~~or public waters wetlands,~~ or ~~affecting wetlands adjacent to the public waters or public waters~~ wetlands within the shoreland protection zone, the technical evaluation panel ~~shall~~ also includes a technical professional employee of the Department of Natural Resources. ~~For purposes of this section, "adjacent" means within the shoreland wetland protection zone or 1,000 feet, whichever is less.~~ The local government unit ~~shall~~ must coordinate the panel.

B. Two members of the technical evaluation panel must be knowledgeable and trained in applying methodologies of the "United States Army Corps of Engineers Wetland Delineation Manual" (January 1987), "Wetland Plants and Plant Communities of Minnesota & Wisconsin" (S. Eggers and D. Reed 1997), "Wetlands of the United States" (United States Fish and Wildlife Service Circular 39, 1971 edition), and "Classification of Wetlands and Deepwater Habitats of the United States" (Cowardin, et al., 1979 edition), including updates, supplementary guidance, or replacements of these methods provided by the board. The panel ~~shall~~ must also be knowledgeable and trained in evaluation of wetland functions and

the resulting public values. The technical evaluation panel may ~~invite~~ seek advice and assistance from others with additional technical expertise to help the panel in its work.

~~C. The technical evaluation panel, if requested to do so by the local government unit, the landowner, or a member of the panel, shall must make technical findings and recommendations regarding applications, the scope of this chapter and the act, the applicability of exemption and no-loss standards, wetland functions and the resulting public values, direct and indirect impacts, possible violations of this chapter and the act, enforcement matters under 8420.XXXX, location, size, and type for replacement plans, and wetland banking plans and exemption, no-loss, wetland boundary or type, and sequencing requests, and for comprehensive wetland protection and management plans and wetland ordinances, and other technical issues related to implementation of this chapter if requested to do so by the local government unit, the landowner, or a member of the technical evaluation panel. The panel also must review applications for replacement of public road projects as provided in 8420.XXXX, banking projects as provided in 8420.XXXX, and monitoring of replacement wetlands as provided in 8420.XXXX. The technical evaluation panel shall must provide its determinations findings to the local government unit for consideration. The preceding sentence was relocated here from the previous 8420.0510 subpart 3.~~ The panel may ~~review replacement plans and wetland banking plans and exemption, no-loss, wetland boundary or type, and sequencing requests, and~~ recommend to the local government unit either approval, approval with changes or conditions, or ~~rejection~~ denial of an application.

~~D. When a technical evaluation panel makes a recommendation, the local government unit must consider the recommendation of the technical evaluation panel in its approval or denial of an application plan or determination. The panel shall will make no findings or recommendations without at least one member having made an on-site inspection. Panel findings and recommendations must be documented and endorsed by a majority of the members. If the local government unit does not agree with the technical evaluation panel's findings and recommendation, the detailed reasons for the disagreement must be part of the local government unit's record of decision.~~

~~E. Applicants for replacement plans, wetland banking plans and exemption, no-loss, and wetland boundary or type, and sequencing determinations must cooperate in providing local government unit staff and members of the technical evaluation panel and their designated experts with access to proposed project sites for investigation. Such investigations shall must be preceded by notice to the landowner or designated agent, unless prior approval has been granted. If an applicant refuses to allow access, the local government unit may deny an application.~~

~~If the local government unit has a comprehensive wetland protection and management plan that delineates location, size, and type for all wetlands, approved by the technical evaluation panel, and subsequently incorporated into local ordinance, then the local government unit can make determinations without a recommendation from the technical evaluation panel.~~

~~If requested by the local government unit, the landowner, or a member of the technical evaluation panel, the panel shall answer technical questions or participate in the monitoring of replacement wetlands according to parts 8420.0600 to 8420.0630, and shall similarly participate in the monitoring of banked wetlands according to parts 8420.0700 to 8420.0760.~~

~~8420.0210 EXEMPTION DETERMINATIONS.~~

~~The entire 8420.0210 was relocated to the Application Procedures section and edited there.~~

~~8420.0220 NO-LOSS DETERMINATIONS.~~

~~The local government unit decision must be made in compliance with Minnesota Statutes, section 15.99. The local government unit decision must be sent to the landowner, members of the technical evaluation panel, the watershed district or water management organization if there is one, the commissioner of natural resources, and individual members of the public who request a copy within ten working days of the decision.~~

~~D. the activities are in a surface impoundment for containment of waste material or water treatment;~~
Other than the strikeout above, the entire 8420.0220 was relocated to the No Loss Applications part in the Application Procedures section, and the No Loss part in the Boundary or Type, No Loss, and Exemption standards section and edited at those locations.

8420.0225 WETLAND BOUNDARY OR TYPE DETERMINATIONS.

~~A. A landowner may apply for a wetland boundary or type determination from the local government unit. The landowner applying for the determination is responsible for submitting proof necessary to make the determination, including, but not limited to, wetland delineation field data, observation well data, topographic mapping, survey mapping, and information regarding soils, vegetation, hydrology, and groundwater both within and outside of the proposed wetland boundary.~~

Item A above was relocated to the Wetland Boundary or Type Applications part of the Application Procedures section.

~~B. A local government unit that receives an application under item A may seek the advice of the technical evaluation panel and, if necessary, expand the technical evaluation panel.~~

~~C. The local government unit decision must be made in compliance with Minnesota Statutes, section 15.99. Within ten working days of the decision, the local government unit decision must be sent to the landowner, members of the technical evaluation panel, the watershed district or watershed management organization if there is one, the commissioner of natural resources, and individual members of the public who request a copy.~~

~~D. The local government unit decision is valid for three years unless the technical evaluation panel determines that natural or artificial changes to the hydrology, vegetation, or soils of the area have been sufficient to alter the wetland boundary or type.~~

The preceding sentence was relocated to the Application and Decision Noticing part of this section.

~~Statutory Authority: MS s 14.386; L 2000 c 382 s 20; 103B.3355; 103G.2242~~

~~History: 25 SR 152; 27 SR 135~~

~~Posted: August 14, 2007~~

8420.0225 item A was relocated to the Wetland Boundary or Type part of the Application Procedures section and edited there. The remaining language was deleted as it was unnecessary and/or replaced by similar language elsewhere.

8420.0230XXXX REPLACEMENT PLAN DETERMINATIONS LOCAL GOVERNMENT UNIT APPLICATION AND DECISION PROCEDURES.

Subpart 1. **General.** Noticing and local government unit decisions made under this chapter must be in compliance with Minnesota Statutes, section 15.99.

Subpart 2. **Determination of Complete Application.** If, within 15 business days of receipt of an application, the local government unit finds that an application is incomplete, the local government unit must notify the applicant and list in writing what items or information is missing. Part 8420.0XXX, (Title), must be the basis for determining a complete application. The local government unit may cite seasonal constraints as a basis for determining an application incomplete.

Subpart 4 3. **Notice of Application.** A landowner intending to drain, excavate, or fill a wetland who does not qualify for an exemption or no-loss determination shall obtain approval of a replacement plan from the local government unit before beginning draining or filling. A person who does not do so is subject to the enforcement provisions in this chapter and Minnesota Statutes, section 103G.2372.

The two sentences above are relocated to the Replacement Plan part in the Application Procedures section.

~~Within ten days of receipt of an application for an activity affecting less than 10,000 square feet of wetland, the local government unit must send a summary of the application, which includes information to identify the applicant and the location and scope of the project, to members of the technical evaluation panel, the commissioner of natural resources, and individual members of the public who have requested a copy. The project notification must state when the comment period ends.~~

~~Within ten working fifteen business days of receipt of an complete application for approval of a replacement plan for an activity affecting 10,000 square feet or more of total wetland impacts, the local government unit must send a copy of the application and an invitation to submit comments a notice of application on a form provided by the board to members of the technical evaluation panel; the watershed district or water management organization if there is one; the commissioner of natural resources and~~

individual members of the public who request a copy. The notice must identify the type of application, the date the comment period ends, and where to provide comments. Individual members of the public who request a copy must be sent a summary of the application that includes information to identify the applicant and the location and scope of the project. The comment period must be at least 15 business days or more from the date the notice of application is mailed. ~~The project notification must state when the comment period ends.~~

~~An application for approval of a replacement plan includes a revised application for replacement plan approval and an application for a r~~Revisions of to an approved replacement plan must be noticed according to this subpart by sending a summary of the proposed revisions if any of the following apply:

A. ~~t~~The wetland area to be ~~drained or filled~~ impacted under the revised replacement plan is:

1) more than ten percent larger than the area to be drained or filled under the original replacement plan;
~~or~~

2) a different type;

3) part of a different wetland; or

4) B. the wetland area to be drained or filled under the revised replacement plan is located more than 500 feet from the location of the previously approved wetland impact area to be drained or filled under the original replacement plan.

B. The replacement is:

1) a different type;

2) more than 500 feet from the location of the previously approved replacement; or

3) a different action eligible for credit.

Subp. 2 ~~4~~. **Decision.** The local government unit decision ~~shall~~ must be based on the ~~replacement~~ standards in parts 8420.0500XXXX to 8420.0630XXXX, and on the technical evaluation panel's ~~determination findings and recommendation~~, if there is one, ~~concerning the wetland functions and resulting public values, location, size, and type of the wetland being altered.~~ The local government unit decision must be made in compliance with the time period prescribed by Minnesota Statutes, section 15.99 which, at the date of this rule, generally requires a decision in 60 days. The local government unit ~~shall~~ must consider and include the technical evaluation panel's recommendation, if there is one, to approve, modify, or reject the ~~proposed replacement plan application.~~ The local government unit must also consider any comments received from those required to receive notice. The local government unit decision is valid for three years or as otherwise specified in the local government unit's decision, unless the technical evaluation panel concurs with an extension determines that natural or artificial changes to the hydrology, vegetation, or soils of the area have been sufficient to alter the wetland boundary or type. *The preceding sentence was relocated here from the previous 8420.0220.*

Subp. 5. **Notice of Decision.** The local government unit decision must be sent to the landowner within ten ~~working business~~ days of the decision. A summary of the local government unit decision must be sent within ten ~~working business~~ days of the decision to those required to receive notice of the application in a format provided by the board. The notice of decision mailed by the local government unit must include information on the process and time frames period to appeal the decision of the local government unit. *The preceding sentence was relocated here from the previous 8420.0200 subpart 2 C.*

Subp. 6. **Decisions and noticing for replacement via banking.** For replacement plan applications proposing the use of banking credits, the local government unit must verify, prior to approving the application, that the credits to be withdrawn are available and the applicant has a purchase agreement with the seller. On For an approval of the applicant's wetland a replacement plan using wetland banking credits as wetland replacement, the local government unit shall must notify the board's banking administrator to debit the appropriate account by type and amount. The board will complete the accounting transactions and send a notice of wetland banking credit withdrawal to the local government unit, the account holder, and the applicant. *The preceding two sentences were relocated here from the previous banking section.*

~~For wetland replacement plans involving more than one local government unit, approval of all local government units involved or as specified in part 8420.0200 shall constitute final approval of the replacement plan and is required before the project may proceed. The local government unit with jurisdiction for the impact site must approve all components of the replacement plan, following the procedures in parts 8420.0500 to 8420.0630. The local government unit with jurisdiction for the replacement site shall limit the review to evaluation of the replacement site as in parts 8420.0540 to 8420.0630 and make a decision accordingly.~~

~~As part of the approval of the replacement plan, the local government unit with jurisdiction for the replacement site assumes responsibility for ensuring compliance with monitoring provisions according to parts 8420.0600 to 8420.0630. The local government unit with jurisdiction for the replacement site may enter into joint powers agreements with a local government unit with jurisdiction for the impact site, assess fees, or develop other procedures considered necessary to facilitate the process.~~

The preceding two paragraphs was relocated to Determining Local Government Unit; Duties, subpart 1C in this section and edited there.

8420.0505 PREVIOUSLY APPROVED DETERMINATIONS APPLICATIONS.

Replacement plan, banking plans exemption, public road project notification, wetland boundary, wetland type, and no-loss determinations Approved applications may be completed under the laws, rules, conditions, and guidelines in effect when they were approved, **provided the local government unit's approval is still valid.**

8420.0240 TECHNICAL EVALUATION PANEL PROCEDURES.

The entire 8420.0240 was relocated to the Local Government Unit Duties and Procedures section and edited there.

8420.0245 OTHER LOCAL GOVERNMENT UNIT WETLAND RULES AND ORDINANCES.

The entire 8420.0245 was relocated to the Local Government Unit Duties and Procedures section.

8420.0250 APPEALS.

~~Subpart 1. Appeal of local government unit decisions.~~

~~Subp. 2. [Repealed, 22 SR 1877]~~

~~Subp. 3. Board appeal procedures.~~

8420.0250 Subparts 1 and 3 were relocated to the Appeals, Compensation, and Enforcement section and edited there.

~~Subp. 4. County or watershed reclassification.~~

~~Subp. 5. [Repealed, 27 SR 135]~~

8420.0250 Subpart 4 was relocated to the Presettlement Wetland Acres and Areas part in the Purpose and Definitions section and edited there.

8420.0260 PENALTY FOR LOCAL GOVERNMENT UNIT FAILURE TO APPLY LAW.

The entire 8420.0260 was relocated to the Local Government Unit Duties and Procedures section and edited there.

8420.0268 COMPENSATION CLAIMS AGAINST LOCAL GOVERNMENT UNITS.

The entire 8420.0268 was relocated to the Appeals, Compensation, and Enforcement section and edited there.

8420.0270 COMPENSATION.

The entire 8420.0270 was relocated to the Appeals, Compensation, and Enforcement section and edited there.

8420.0280 APPEAL FROM BOARD DECISIONS.

8420.0280 was relocated to the Appeals, Compensation, and Enforcement section.

8420.0290 ENFORCEMENT PROCEDURES.

~~Subpart 1. Enforcement authorities.~~
~~Subp. 2. Cease and desist orders.~~
~~Subp. 3. Restoration and replacement orders.~~
~~Subp. 3a. Contents of order.~~
~~Subp. 3b. Enforcement authority orders.~~
~~Subp. 3c. Appeals of replacement and restoration orders.~~
~~Subp. 4. After-the-fact replacement.~~

420.0280 Subparts 1 through 5 were relocated to the Appeals, Compensation, and Enforcement section and edited there. All remain in the Enforcement Procedures part except Subpart 3c, which was relocated to the Appeals part.

~~Subp. 6. Contractor's responsibility when work drains, excavates, or fills wetlands.~~
420.0280 Subpart 6 was relocated to the Application Procedures section and edited there.

MINING

~~8420.0300 MINING.~~

The entire part 8420.0300 was relocated to the Activities Under Department of Natural Resources Jurisdiction section and edited there.

~~HIGH PRIORITY REGIONS AND AREAS~~

~~8420.0350 HIGH PRIORITY REGIONS AND AREAS.~~

The entire part 8420.0350 was relocated to the Wetland Planning section and edited there.

~~WETLAND PRESERVATION AREAS~~

~~8420.0400 WETLAND PRESERVATION AREAS.~~

The entire part 8420.0400 was relocated to the Wetland Planning section and edited there.

APPLICATION PROCEDURES

8420.XXXX GENERAL APPLICATION REQUIREMENTS.

A. Persons requesting approval of wetland boundary or type, no-loss, exemption, sequencing, or replacement plan applications must fulfill the application requirements of this part and those applicable to the type of application submitted. Application requirements for establishment of a wetland bank can be found in 8420.XXXX.

B. The following information must be submitted to the local government unit for all types of applications:

- (1) the post office address of the applicant;
- (2) for corporations, the principal officers of the corporation, any parent companies, owners, partners, and joint venturers, and a designated contact person; and
- (3) managing agents, subsidiaries, or consultants that are or may be involved with the wetland draining or filling project;
- (4) the type of decision requested;
- (5) the location of the project by township, range, and section;
- (6) an accurate map, survey, or recent aerial photograph showing boundary of the project area and boundary, size, and type of each wetland relevant to the type of decision requested;
- (7) if applicable to the type of decision requested, a written description of the proposed project and project area, including its areal extent, with sufficient detail to allow the local government unit to determine the amount and types of wetland to be affected; and
- (8) other information considered necessary for evaluation of the application or project by the local government unit; and

#7 and #8 were relocated here from the previous 8420.0530 Replacement Plan Components section. #7 was reworded.

8420.0225XXXX WETLAND BOUNDARY OR TYPE DETERMINATIONS APPLICATIONS.

~~A.~~ A landowner may apply for a wetland boundary or type determination approval from the local government unit. The landowner applying for the determination is responsible for submitting proof necessary to make the determination decision, including, but not limited to, wetland delineation field data, observation well data, topographic mapping, survey mapping, and information regarding soils, vegetation, hydrology, and groundwater both within and outside of the proposed wetland boundary. Applications for approval of wetland boundary or type must include information in accordance with wetland delineation report submittal guidelines issued by the board.

8420.0220 XXXX NO-LOSS DETERMINATIONS APPLICATIONS.

A landowner ~~unsure if proposed work will result in a loss of wetland~~ may apply to the local government unit for a determination no-loss decision. A landowner who does not request a determination decision from the local government unit and proceeds with the activity may be subject to the enforcement provisions in part 8420.0290XXXX and Minnesota Statutes, section 103G.2372. ~~The local government unit must keep on file all documentation and findings of fact concerning no-loss determinations for a period of ten years.~~

The landowner applying for a no-loss determination is responsible for submitting the proof necessary to show qualification for the claim, including proof of the requisite property rights to do the activity. The local government unit may require a wetland delineation report or functional assessment be submitted if it determines the report or assessment necessary to make a decision on the no-loss application. A landowner may seek advice from the local government unit regarding the applicability of a no-loss without submitting an application. This part also applies to applications requesting a decision on the scope of this chapter. ~~The local government unit may evaluate evidence for a no-loss claim without making a determination.~~ ***The preceding sentence is now covered in subpart 2C of the Determining Local Government Unit; Duties part in the Local Government Unit Duties and Procedures section.***

8420.0210XXXX EXEMPTION DETERMINATIONS APPLICATIONS.

A landowner intending to drain or fill impact a wetland without replacement, claiming exemption under part 8420.0122, may contact apply to the local government unit before beginning draining or filling activities impacting the wetland for a determination decision to whether or not the activity impact is exempt. A landowner who does not request a determination decision may be subject to the enforcement provisions in part 8420.0290 and Minnesota Statutes, section 103G.2372. ~~The local government unit must keep on file all documentation and findings of fact concerning exemption determinations for a period of ten years.~~ An exemption may apply whether or not the local government unit has made an exemption determination decision. If the landowner requests an exemption determination decision, then the local government unit must make one.

The landowner applying for exemption ~~is responsible for submitting~~ must identify the specific exemption being claimed and submit the proof necessary to show qualification for the particular exemption claimed, including proof of the requisite property rights to do the activity. A landowner may seek advice from the local government unit regarding the applicability of an exemption without submitting an application. ~~The local government unit may evaluate evidence for an exemption without making a determination.~~ ***The preceding sentence was relocated to subpart 2C of the Determining Local Government Unit; Duties part in the Local Government Unit Duties and Procedures section.***

~~The local government unit decision shall be based on the exemptions standards in part 8420.0122. If the decision requires a finding of wetland size or type, the local government unit should seek the advice of the technical panel as described in part 8420.0240. The local government unit decision must be made in compliance with Minnesota Statutes, section 15.99. The local government unit decision must be sent to the landowner, members of the technical evaluation panel, the watershed district or water management organization if there is one, the commissioner of natural resources, and individual members of the public who request a copy within ten working days of the decision.~~

8420.XXXX SEQUENCING APPLICATIONS.

An applicant landowner may either submit the information required for sequencing analysis as part of a replacement plan application or apply separately for a preliminary sequencing determination decision

from the local government unit before preparing a **complete** replacement plan. The local government unit may request additional information needed to make a **determination decision**. The applicant must provide written documentation of the projects' compliance with the sequencing standards in 8420.XXXX, including the identification of the project purpose and a detailed description of the project and alternatives considered. A landowner may seek advice from the local government unit regarding the adequacy of sequencing arguments and alternatives without submitting an application. **The above language was relocated here from the Sequencing part in the Replacement Standards section.**

8420.0530XXXX REPLACEMENT PLAN COMPONENTS APPLICATIONS.

Subp. 1. Requirement. Landowners proposing wetland impacts that require replacement must apply to the local government unit and gain approval of a replacement plan prior to impacting wetlands.

Subp. 2. Preapplication conference and site visit. Before preparation of a **wetland-value** replacement plan, it is recommended that the landowner meet with the local government unit for a preapplication conference and site visit. The local government unit is encouraged to inform the landowner of all sequencing requirements and the criteria used to evaluate replacement plans.

The above language was relocated here from the previous 8420.0510 subpart 2.

Subp. 3. Application contents. On an application form approved by the board in consultation with the commissioner of natural resources, provided through the local government unit, and with required attachments supplied by the applicant, the following documentation must be provided in addition to the information required in 8420.XXXX, General Application Requirements; except that for replacement plans utilizing the wetland bank in parts 8420.0700 to 8420.0760, items B, subitem (1); and D, do not apply; instead the applicant shall submit the wetland banking credit withdrawal form prescribed in part 8420.0740, subpart 2, item E:

A. generally, organizational information, including but not limited to the following:

- (1) the post office address of the applicant;
- (2) for corporations, the principal officers of the corporation, any parent companies, owners, partners, and joint venturers, and a designated contact person; and
- (3) managing agents, subsidiaries, or consultants that are or may be involved with the wetland draining or filling project;

Item A was relocated to the General Application Procedures part above.

B. either:

- (1) a signed statement confirming that the wetland acres and values will be replaced in advance of or concurrent with the actual draining or filling of a wetland; or
- (2) an irrevocable bank letter of credit, a performance bond, or other security acceptable to the local government unit in an amount sufficient to guarantee the successful completion of the wetland replacement;

The first sentence above was relocated to item E6 below. The second sentence was relocated to the new subpart 4 below.

C. A. for the impacted wetland:

- (1) a recent aerial photograph or accurate map of the impacted wetland area;
- (2) the location of the wetland;
- (3) the size of the wetland;
- (4) the type of the wetland;
- (5) a list of the dominant vegetation in the impacted wetland area, if known;
- (1) the amount, in square feet or acres, of proposed impact by type;
- (2) the minor watershed, major watershed, and bank service area;
- (6) a soils **survey** map of the site showing soil type and **substrate hydric soils**, where available;
- (7) a map showing the locations of any surface inlets or outlets, natural or otherwise, draining into or out of the wetlands, and if the wetland is within the shoreland wetland protection zone or floodplain of a stream, river, or other watercourse, the distance and direction to the watercourse;
- (8) the nature of the proposed project, its areal extent, and the impact on the wetland must be described in sufficient detail to allow the local government unit to determine the amount and types of wetland to be

~~impacted and to demonstrate compliance with the replacement sequencing criteria in part 8420.0520, if applicable;~~

~~(95) evidence of ownership or property rights to the affected areas; and~~

F (6). information known to the applicant or readily available concerning the special considerations criteria in part 8420.0540 XXXX, subpart 9 X;

~~(107) a list of all other known local, state, and federal permits and approvals required for the activity, if known;~~

~~(8) a narrative and other information necessary to demonstrate compliance with the replacement sequencing criteria in part 8420.0520;~~

The language in #6 above was relocated partly to #8 and partly to the General Application Requirements part where it was re-worded.

~~D B.~~ for the replacement wetland, ~~item C, subitems (1) to (7), (9), and (10), and:~~

~~(1) the proposed action eligible for credit from part XXXX;~~

~~(2) the minor watershed, major watershed, and bank service area;~~

~~(3) evidence of ownership or property rights to the replacement areas;~~

~~(4) information known to the applicant or readily available concerning the special considerations criteria in part 8420.XXXX, subpart X;~~

~~(5) a map showing the locations of any existing surface inlets or outlets, natural or otherwise, draining into or out of the replacement wetlands, and if the replacement wetland is within the shoreland wetland protection zone or floodplain of a stream, river, or other watercourse, the distance and direction to the watercourse;~~

~~(1) an explanation of the size and type of wetland that will result from successful completion of the replacement plan;~~

~~(26) scale drawings showing plan and profile views of the replacement wetland areas;~~

~~(37) a description of how the replacement wetland shall area will be constructed, for example, excavation or restoration by blocking an existing tile; the type, size, and specifications of outlet structures; elevations, relative to Mean Sea Level or established bench mark, of key features, for example, sill, emergency overflow, and structure height; and best management practices that will be implemented to prevent erosion or site degradation;~~

~~(48) for created wetlands only, additional a soil survey map of the site showing soil type and hydric soils, where available, and site-specific soils information sufficient to determine the capability of the site to produce and maintain sustain wetland characteristics and replacement goals;~~

~~(59) a timetable that clearly states how and when implementation of the replacement plan shall proceed, and when construction of the replacement wetland shall area will be finalized;~~

~~(6) a notice in a form provided by the board attached to and recorded with the deed for lands containing a replacement wetland, specifying the following:~~

~~(a) the location of the replacement wetland;~~

~~(b) that the wetland is subject to the act;~~

~~(c) that the fee title owner is responsible for the costs of repairs or reconstruction and management, if necessary, or for replacement costs;~~

~~(d) that reasonable access to the replacement wetland shall be granted to the proper authorities for inspection, monitoring, and enforcement purposes;~~

~~(e) that costs of title review and document recording is the responsibility of the fee title owner; and~~

~~(f) that the local government unit or board can require necessary repairs or reconstruction and revegetation work to return the wetland to the specifications of the approved replacement plan and require reimbursement of reasonable costs from the wetland owner, or can require replacement of the wetland according to the act;~~

#6 was relocated to subpart 2 below.

~~(710) statements signed by the applicant confirming that:~~

(a) a signed statement confirming that the wetland acres and values will be replaced in advance of or concurrent with the actual draining or filling impacting of a wetland; **The preceding sentence was relocated here from earlier in this subpart.**

(b) an affidavit that the replacement wetland area was not previously restored or created under a prior approved replacement plan;

~~(8c) a statement that~~ the replacement wetland area was not drained or filled impacted under an exemption during the previous ten years;

~~(9d) a statement that~~ the replacement wetland area was not, and will not be, restored with financial assistance from public conservation programs, or ~~was not~~ restored for other unrelated regulatory purposes;

~~(10e) a statement that~~ the replacement wetland area was not and will not be, restored using private funds other than those of the landowner unless the funds are paid back with interest to the individual or organization that funded the restoration and the individual or organization notifies the local government unit in writing that the restored wetland may be considered for replacement; and

~~(11f) a statement by the applicant that~~ monitoring will occur in accordance with parts 8420.0610 and 8420.0620 unless the local government unit will be conducting the monitoring of the wetland replacement area;

~~(1211)~~ evidence that a person proposing to create or restore a wetland within the easement of a pipeline as defined in Minnesota Statutes, section 299J.02, subdivision 11, has first notified the easement holder and the director of the Office of Pipeline Safety in writing. The person may not create or restore the wetland if, within 90 days after receiving the required notice, the easement holder or the director of the of Pipeline Safety provides to the person a written notice of objection that includes the reasons for the objection;

(12) a list of all other known local, state, and federal permits and approvals required for the activity;

~~(1313)~~ evidence that any drainage or property rights potentially detrimental to the replacement wetland area have been acquired, subordinated, or otherwise eliminated; and

~~(1414)~~ a five-year vegetation establishment and management plan, including seeding rates, planting methods, seed and plant mixes, herbicide treatments, and control of noxious weeds and invasive or nonnative species in accordance with part 8420.XXXX, (Replacement...);

~~E. other information considered necessary for evaluation of the project by the local government unit; and~~

~~F. information known to the applicant or readily available concerning the special considerations criteria in part 8420.0540, subpart 9.~~

C. a description of the required replacement and the size, type, and credits expected to result from the proposed replacement actions; and

Subp. 4. **Approval conditions.** A landowner cannot impact a wetland under an approved replacement plan until submittal of the following, to the satisfaction of the local government unit:

A. for replacement that is not in advance according to part 8420.XXXX, or as otherwise required, an irrevocable bank letter of credit, a performance bond, or other security acceptable to the local government unit in an amount determined by the local government unit to be sufficient to guarantee the successful completion of the wetland replacement; and

(6) B. a notice in a form provided by the board attached to and recorded with the deed for lands containing a replacement wetland, specifying the following:

(a1) the location of the replacement wetland area;

(b2) that the wetland replacement area is subject to the act;

(c3) that the fee title owner is responsible for the costs of repairs or reconstruction and management, if necessary, or for replacement costs;

(d4) that reasonable access to the replacement wetland shall area will be granted to the proper authorities for inspection, monitoring, and enforcement purposes;

(e5) that costs of title review and document recording is the responsibility of the fee title owner; and

(f6) that the local government unit or board can require necessary repairs or reconstruction and revegetation work to return the wetland to the specifications of the approved replacement plan and require reimbursement of reasonable costs from the wetland owner, or can require replacement of the wetland according to the act.;

Subp. 6. ~~Contractor's responsibility when work drains, excavates, or fills wetlands.~~

8420.XXXX CONTRACTOR'S NOTIFICATION RESPONSIBILITY.

For the purposes of this part, "contractor" means an individual, business, or other organization providing a product or service to a landowner or the landowner's agent.

A. ~~An agent or employee of another may~~ A contractor must not drain, excavate, or fill a wetland, wholly or partially, unless the ~~agent or employee contractor~~ has, on a form provided by the board:

- (1) obtained a signed statement from the landowner stating that the wetland replacement plan required for the work has been obtained or that a replacement plan is not required; and
- (2) ~~mailed sent~~ a copy of the statement to the local government unit with jurisdiction over the wetland.

B. Work in violation of this part is a misdemeanor.

~~C. The board shall develop a form to be distributed to contractor's associations, local government units, and soil and water conservation districts to comply with this part. The form must include:~~

- ~~(1) a listing of the activities for which a replacement plan is required;~~
- ~~(2) a description of the penalties for violating Minnesota Statutes, sections 103G.2212 to 103G.237;~~
- ~~(3) the telephone number for information on the responsible local government unit;~~
- ~~(4) a statement that national wetland inventory maps are on file with the soil and water conservation district office; and~~
- ~~(5) spaces for a description of the work and the names, mailing addresses, and telephone numbers of the person authorizing the work and the agent or employee proposing to undertake it.~~

The Contractor's Responsibility part was relocated here from Subpart 6 of the previous 8420.0290, Enforcement Procedures.

BOUNDARY OR TYPE, NO-LOSS, AND EXEMPTION STANDARDS

8420.XXXX BOUNDARY OR TYPE.

Subpart 1. Wetland Boundary. Wetland boundaries must be determined using the methodologies in the United States Army Corps of Engineers Wetlands Delineation Manual (January 1987) and subsequent updates, guidance, and supplements.

Subp. 2. Wetland Type. Wetland type must be identified according to Classification of Wetlands and Deepwater Habitats of the United States (Cowardin, et al., 1979), United States Fish and Wildlife Service Circular No. 39 (1971 edition) "Wetlands of the United States," or Wetland Plants and Plant Communities of Minnesota and Wisconsin (S. Eggers and D. Reed, 1997), as modified by the Board of Water and Soil Resources-United States Army Corps of Engineers Wetland Mitigation Memorandum of Understanding (May 2007) or any modifications approved by the board. The documents referenced under this subpart are incorporated by reference, are not subject to frequent change, and are available through the Minitex interlibrary loan system or on the board's Web site at <http://www.bwsr.state.mn.us>.

The above language was relocated here from the previous 8420.0510 subpart 3.

Wetland type in relation to Classification of Wetlands and Deepwater Habitats of the United States (Cowardin, et al., 1979) and United States Fish and Wildlife Service Circular No. 39 (1971 edition) "Wetlands of the United States" is shown in the following table:

<u>Wetland Plants and Plant Communities of Minnesota and Wisconsin (Eggers and Reed 1997), as modified by the Board of Water and Soil Resources-United States Army Corps of Engineers Wetland Mitigation Memorandum of Understanding (May 2007)</u>	<u>Classification of Wetlands and Deepwater Habitats of the United States (Cowardin et al. 1979)</u>	<u>Fish and Wildlife Service Circular 39 (Shaw and Fredine 1971)</u>
Shallow, open water	Palustrine or lacustrine, littoral; aquatic bed;	Type 5: Inland open fresh water

	submergent, floating, and floating-leaved	
Deep marsh	Palustrine or lacustrine, littoral; aquatic bed; submergent, floating, and floating-leaved; emergent; persistent and nonpersistent	Type 4: Inland deep fresh marsh
Shallow marsh	Palustrine; emergent; persistent and nonpersistent	Type 3: Inland shallow fresh marsh
Sedge meadow	Palustrine; emergent; narrow-leaved persistent	Type 2: Inland fresh meadow
Fresh (wet) meadow	Palustrine; emergent; broad- and narrow-leaved persistent	Type 1: Seasonally flooded basin or flat Type 2: Inland fresh meadow
Wet to wet-mesic prairie	Palustrine; emergent; broad- and narrow-leaved persistent	Type 1: Seasonally flooded basin or flat Type 2: Inland fresh meadow
Calcareous fen	Palustrine; emergent; narrow-leaved persistent; scrub/shrub; broad-leaved deciduous	Type 2: Inland fresh meadow Type 6: Shrub swamp
Open bog or coniferous bog	Palustrine; moss/lichen; scrub/shrub; broad-leaved evergreen; forested; needle-leaved evergreen and deciduous	Type 8: Bog
Shrub-carr or alder thicket	Palustrine; scrub/shrub; broad-leaved deciduous	Type 6: Shrub swamp
Hardwood swamp or coniferous swamp	Palustrine; forested; broad-leaved deciduous; needle-leaved evergreen and deciduous	Type 7: Wooded swamp
Floodplain forest	Palustrine; forested; broad-leaved deciduous	Type 1: Seasonally flooded basin or flat
Seasonally flooded basin	Palustrine; flat; emergent; persistent and nonpersistent	Type 1: Seasonally flooded basin or flat

Note: In the final version of the rule the above table will be modified to correlate to all wetland plant communities (not just the modified communities above) and Cowardin will be moved to the far right column.

8420.XXXX NO LOSS AND EXEMPTION CONDITIONS.

A person conducting an activity in a wetland under a **no loss in part 8420.XXXX or an exemption in part 8420.0122XXXX** shall ensure that:

A. appropriate erosion control measures are taken to prevent sedimentation of the **wetland or of any receiving waters;**

B. the activity does not block fish activity in a watercourse; and

C. the activity is conducted in compliance with all other applicable federal, state, and local requirements, including best management practices as listed in part [8420.0112](#), and water resource protection requirements established under Minnesota Statutes, chapter 103H.

The above language was relocated here from the previous 8420.0115.

8420.XXXX NO-LOSS CRITERIA.

Supp. XX. **No-Loss.** No-Loss means no permanent loss of, or impact to, wetlands from an activity according to the criteria in this part. ~~Wetland impacts Activities that do not qualify for a no-loss determination according to the criteria in item A are this part may be subject to replacement under the criteria in according to parts 8420.0530 to 8420.0630.~~ *The preceding sentence was relocated here from 8420.0520 Subpart 5 C. The following sentence and item A are relocated here from the previous No-Loss Determinations part.* ~~The local government unit shall make An activity qualifies for a no-loss determination if the landowner requests and if either:~~

A. the ~~work activity~~ will not impact a wetland;

B. the activity is limited to excavation and meets all of the following:

(1) the excavation is restricted to wetland areas that have been degraded by actions wholly unrelated to the proposed project or project sponsor, or that contain predominantly non-native or invasive plant species;

(2) the excavated wetland will not receive additional untreated stormwater or agricultural drainage, or be physically altered primarily to gain necessary storage capacity to meet other unrelated regulatory requirements;

(3) side slopes of excavated areas must be no steeper than 5:1 and maximum water depth must be less than two meters;

(4) the excavation will not result in a threat to public health, safety, and welfare; and

(5) the excavation will not drain, fill, or indirectly impact the wetland;

~~B C.~~ the excavation ~~work activity~~ is limited to removal of ~~sediment or~~ debris such as trees, logs, stumps, ~~beaver dams, blockage of culverts,~~ and trash, provided the removal does not ~~result in~~ alteration of the original cross-section of the wetland ~~or watercourse.~~ Wetland areas created by beaver activities may be drained by removing those materials placed by beaver. Drainage is permitted by removing or moving materials blocking installed roadway culverts and related drainage structures. Additional excavation or removal of other materials is not permitted unless it can be shown by aerial photographs that the proposed activity will not drain or fill wetland that was there before the beaver dam was built or before the culvert became plugged. *The preceding three sentences were relocated here from the previous incidental exemption.*

~~C D.~~ temporary or seasonal water level management activities ~~that~~ will not result in the conversion of a wetland ~~to a different type or to a non-wetland;~~

E. the activity is being conducted as part of an approved replacement or banking plan or is conducted or authorized by public agencies for the purpose of wetland restoration, fish and wildlife habitat restoration or improvement using guidance in part [8420.0112](#), item J, or repair and maintenance of earthen containment structures;

F. the ~~excavation~~ activity is limited to ~~excavation and~~ removal of deposited sediment in ~~constructed stormwater management basins or~~ wetlands that are presently utilized as stormwater management basins, or ~~to the~~ excavation and removal of contaminated substrate, and the excavated area is ~~limited to the minimum dimensions necessary for achieving the desired purpose and~~ stabilized ~~so as to prevent water quality degradation and the excavation is limited to the minimum dimensions necessary for achieving the desired purpose;~~ or

Items D, E, and F above were relocated here from the previous No-Loss Determinations part.

G. the activities is associated with the operation, routine maintenance, or emergency repair of existing utilities and public works structures, including pipelines, provided the activities do not result in additional wetland intrusion or additional **draining or filling of a wetland impacts**, either wholly or partially; **or**
The language in H above is relocated here from the Utilities; public works exemption.

H. the activity consists of temporarily crossing or entering a wetland to perform silvicultural activities, including timber harvest as part of a forest management activity, so long as the activity limits the impact on the hydrologic and biologic characteristics of the wetland; the activity does not result in the construction of dikes, drainage ditches, tile lines, or buildings; and the timber harvesting and other silvicultural practices do not result in the drainage of the wetland or public waters.; **or** *The preceding sentence was relocated here from the forestry exemption.*

I. the project is ~~an impact rectification activity listed in part 8420.0520, subpart 5. a temporary impact that is rectified by repairing, rehabilitating, or restoring the affected wetland. A no-loss under this item only applies if all of the following conditions are met:~~

- (1) the physical characteristics of the affected wetland, including ground elevations, contours, inlet dimensions, outlet dimensions, substrate, plant communities, and hydrologic regime, are restored to preproject conditions sufficient to ensure that all preproject functions and values are restored;
 - (2) the activity is completed and the physical characteristics of the wetland are restored within six months of the start of the activity, **unless an extension is granted by the local government unit after consultation with the technical evaluation panel; and**
 - (3) the ~~party responsible for the activity~~ **landowner** provides **a performance bond sufficient financial assurance acceptable** to the local government unit ~~for an amount sufficient~~ to cover the estimated cost to restore the wetland to preproject conditions. The local government unit shall return the ~~performance bond financial assurance~~ to the ~~responsible party~~ **landowner** upon a determination by the local government unit that the conditions in this item ~~and item B~~ have been met **by the landowner; and**
- B. (4) An applicant shall be granted a no-loss determination a no-loss has not been approved** under the criteria in ~~this item~~ **A once in a ten-year period** for a particular site within a wetland **within the previous 10 years**, except that repairs to the original project ~~shall may~~ be allowed under the no-loss ~~determination~~, if the local government unit determines the request to be necessary and reasonable.

The language from 8420.0520 Subpart 5 that was previously referenced here was relocated here and combined with the original language in the new item I.

8420.0115XXXX SCOPE OF EXEMPTION STANDARDS.

Subpart 1. Scope. Persons proposing to conduct an exempt activity are encouraged to contact the local government unit ~~or the local government unit's designee~~ for advice on determining whether a proposed project is eligible for an exemption and to evaluate alternatives to avoid or minimize wetland impacts. An **activity impact** is exempt ~~from replacement standards~~ if it qualifies for any one of the exemptions, ~~even though it may be indicated as not exempt under another exemption.~~

A. These No exemptions ~~do not~~ apply to **impacts to:**

- (1) calcareous fens as identified by the commissioner;
- (2) ~~wetlands that have been deposited in the state wetland bank;~~
- (3) ~~No exemptions apply to~~ wetlands that have been previously restored or created as a result of an approved replacement plan; ~~or. All such wetlands are subject to replacement on subsequent drainage, excavation, or filling.~~
- (4) ~~Wetlands may not be that were~~ partially ~~drained, excavated, or filled~~ **impacted** in order to claim an exemption ~~or no-loss determination~~ on the remainder. ~~Therefore, an exemption or no-loss determination may not be applied to the remaining wetland if it~~ **when the exemption** would not have been applicable before the impact.

Impacts to any ~~All~~ such wetlands are subject to replacement **according to the requirements of parts 8420.XXXX to 8420.XXXX or, for calcareous fens, part 8420.XXXX on subsequent drainage, excavation, or filling.**

B. With the exception of subpart 2D. Exemptions may not be combined on a ~~wetland that is impacted by~~ a project.

A person conducting an activity in a wetland under an exemption in part 8420.0122 shall ensure that:

A. appropriate erosion control measures are taken to prevent sedimentation of the water;

B. the activity does not block fish activity in a watercourse; and

C. the activity is conducted in compliance with all other applicable federal, state, and local requirements, including best management practices as listed in part 8420.0112, and water resource protection requirements established under Minnesota Statutes, chapter 103H.

The above language was relocated to the No-Loss and Exemption Conditions part in this section.

H. Present and future owners of wetlands ~~drained or filled impacted~~ without replacement under an exemption ~~for agricultural activities in subpart X or drainage in subpart X in item B or E~~ may ~~can~~ make no use of the wetland area after it is ~~drained, excavated, or filled impacted~~, other than as agricultural land ~~or other use specified in subpart X~~, for at least ten years after the ~~draining, excavating, or filling impact~~, unless it is first replaced under the requirements of Minnesota Statutes, section 103G.222. ~~Also, for at least ten years, the wetland may not be restored for replacement credit.~~ Except for land in public ownership, at the time of ~~draining, excavation, or filling impact~~, the local government unit may require the landowner to record a notice of these restrictions in the office of the county recorder for the county in which the project is located. ~~The local government unit may require recording a notice of these restrictions~~ if it determines the wetland area ~~drained impacted~~ is at risk of conversion to a nonagricultural use ~~or other use than specified in subpart X~~ within ten years, based on the zoning classification, proximity to a municipality or full service road, or other criteria as determined by the local government unit. In making a determination under this item, the local government unit must review the applicable comprehensive plan when evaluating the risk of conversion to a nonagricultural use and monitor and enforce the prohibition on using the area ~~drained, filled, or excavated impacted~~ for a nonagricultural purpose for at least ten years. At a minimum, the recorded document must contain the name or names of the landowners, a legal description of the property to which the restrictions apply, a statement of the restrictions, the date on which the restrictions expire, the name of the local government that ~~certified approved~~ the exemption, if such occurred, the signatures of all owners, and an acknowledgment.

The above language was relocated here from the previous 8420.0122 Subpart 2, H.

8420.0122 EXEMPTION STANDARDS.

Subp. ~~art 1~~ 2. **Agricultural activities.** A replacement plan ~~for wetlands~~ is not required for:

A. ~~activities in impacts to~~ a wetland that was planted with annually seeded crops or was in a crop rotation seeding of pasture grass or legumes in six of the last ten years prior to January 1, 1991. Documentation, such as aerial photographs, ~~and~~ United States Department of Agriculture records, ~~or affidavit of landowner must be required by the local government unit to show and use may be used~~ as evidence for this exemption. ~~Land A wetland~~ eligible for this exemption must be ~~wetland types 1 and 2 a seasonally flooded basin, sedge meadow, fresh wet meadow, or wet to wet-mesic prairie in combination or in its entirety;~~

B. ~~activities in a type 1 wetland impacts to a seasonally flooded basin~~ on agricultural pasture land that remains in the same use, ~~except for bottomland hardwood type 1 wetlands,~~ and ~~activities in a type 2 or type 6 wetland impacts to a sedge meadow, fresh wet meadow, wet to wet-mesic prairie, shrub carr, or alder thicket in combination or in its entirety~~ that is less than two acres in size and located on agricultural pasture land that remains in the same use;

C. ~~activities in a wetland conducted as part of normal farming practices. For purposes of this item, "normal farming practices" means farming, silvicultural, grazing, and ranching activities such as plowing, seeding, cultivating, and harvesting for the production of feed, food, and fiber products, but does not include activities that result in the draining of wetlands;~~

Item C was relocated to scope as these activities are not regulated by WCA.

~~D C. impacts resulting from~~ soil and water conservation ~~practices that do not permanently drain or fill a wetland and projects~~ that are ~~approved~~ certified by the soil and water conservation district ~~technical staff~~ after review by the technical evaluation panel, ~~provided the project minimizes the impact on the hydrologic and biologic characteristics of the wetland.~~ For purposes of this item, examples of soil and water conservation practices include those identified in the State Cost Share Program Manual, available at the Board of Water and Soil Resources Web site (<http://www.bwsr.state.mn.us/cs/costsharemanual.pdf>), and federally funded demonstration, research, and cost share programs and projects;

~~D. This chapter does not prevent~~ filling a wetland to accommodate wheeled booms on irrigation devices if the fill does not impede normal drainage.;

This sentence was relocated here from scope. Identifying it as an exempt activity will have the same effect, but will improve clarity and consistency in how non-jurisdictional, exempt, or no-loss activities are structured in the rule.

E. impacts resulting from aquaculture activities including pond excavation and construction and maintenance of associated access roads and dikes authorized under, and conducted in accordance with, a permit issued by the United States Army Corps of Engineers under section 404 of the federal Clean Water Act, United States Code, title 33, section 1344, but not including construction or expansion of buildings;

F. impacts resulting from wild rice production activities, including necessary diking and other activities authorized under a permit issued by the United States Army Corps of Engineers under section 404 of the federal Clean Water Act, United States Code, title 33, section 1344; ~~and or~~

G. impacts resulting from agricultural activities that are subject to federal farm program restrictions that meet minimum state standards under this chapter and Minnesota Statutes, sections 103A.202 and 103B.3355, and that have been approved by the Board of Water and Soil Resources, the commissioners of natural resources and agriculture, and the Pollution Control Agency. This exemption is not valid until such agreement is approved by the appropriate agencies. ~~The~~ If approved, the conditions and standards ~~shall will~~ be noticed by the board to local government units and published in the State Register. The conditions and standards ~~shall will~~ take effect 30 days after publication and remain in effect unless superseded by subsequent statute, rule, or notice in the State Register. Upon taking effect, this exemption may be applied will only apply to impacts on agricultural land annually enrolled in the federal Farm Program as long as wetlands that are not drained, excavated, or filled beyond what is:

- (1) allowed under the other exemptions in this part;
- (2) necessary to replace, maintain, or repair existing private drainage infrastructure with a capacity not to exceed that which was originally constructed; or
- (3) replaced at a ratio of 1:1 or greater under United States Department of Agriculture provisions as supported by documentation from the United States Department of Agriculture which must be included as evidence to support this exemption.

If the activity impact would result in loss of eligibility, the landowner cannot qualify for the exemption.

Subp. ~~2 3~~. **Drainage. A.**—For the purposes of this subpart, "public drainage system" means a drainage system as defined in Minnesota Statutes, section 103E.005, subdivision 12, and any ditch or tile lawfully connected to the drainage system.

~~B. A replacement plan is not required for draining of type 1 wetlands, or up to five acres of type 2 or type 6 wetlands, in an unincorporated area on land that has been assessed drainage benefits for a public drainage system, provided that:~~

~~(1) during the 20-year period that ended January 1, 1992:~~

- ~~(a) there was an expenditure made from the drainage system account for the public drainage system;~~
- ~~(b) the public drainage system was repaired or maintained as approved by the drainage authority; or~~
- ~~(c) no repair or maintenance of the public drainage system was required under Minnesota Statutes, section 103E.705, subdivision 1, as determined by the public drainage authority; and~~

~~(2) the wetlands are not drained for conversion to:~~

- ~~(a) platted lots;~~

~~(b) planned unit, commercial, or industrial developments; or~~
~~(c) any development with more than one residential unit per 40 acres, except for parcels subject to local zoning standards that allow family members to establish an additional residence on the same 40 acres.~~
~~If wetlands drained under this item are converted to uses prohibited under subitem (2) during the ten-year period following drainage, the wetlands must be replaced under Minnesota Statutes, section 103G.222.~~

A. Drainage maintenance. A replacement plan is not required for:

~~C (1). A replacement plan is not required for draining, excavating, or filling of wetlands, except for draining types 3, 4, and 5 wetlands that have been in existence for more than 25 years, impacts resulting from maintenance and repair of existing public drainage systems conducted or authorized by a public drainage authority pursuant to Minnesota Statutes, chapter 103E, when the maintenance or repair does not drain shallow marsh, deep marsh, or shallow open water communities that have existed for more than 25 years prior to the proposed impact; or-~~

~~D (2). A replacement plan is not required for draining, excavating, or filling of wetlands, except for draining wetlands that have been in existence for more than 25 years, impacts resulting from maintenance and repair of existing drainage systems other than public drainage systems, when the maintenance and repair does not drain wetlands that have existed for more than 25 years prior to the proposed impact.~~

~~For items C and D projects proposed under this item, the landowner must provide documentation that the wetlands which will to be partially or completely drained impacted by the drainage maintenance have not existed for more than 25 years. Documentation may include, but is not limited to: aerial photographs, climatological records, soil borings, vegetative analysis, elevation surveys, or drainage system maintenance records sworn affidavits.~~

E B. Drainage enhancement. A replacement plan is not required for:

(1) draining a wetland on agricultural land that when the wetland was:

~~(1a) was~~ planted with annually seeded crops prior to July 5, except for crops that are normally planted after this date, in eight out of the ten most recent years prior to the impact;

~~(2b) was~~ in a crop rotation seeding of pasture grass, cover crop, or legumes or was fallow for a crop production purpose in eight out of the ten most recent years prior to the impact; or

~~(3c) was~~ enrolled in a state or federal land conservation program and met the requirements of subitem (1) (a) or (21) (b) prior to enrollment.

B. A replacement plan is not required for (2) draining of type 1 wetlands seasonally flooded basins, or up to five acres of type 2 or type 6 wetlands sedge meadow, fresh wet meadow, wet to wet-mesic prairie, shrub carr, or alder thicket wetlands, in an unincorporated area on land that has been assessed drainage benefits for a public drainage system, provided that:

~~(1a) during the 20-year period that ended January 1, 1992:~~

~~(a i) there was an expenditure made from the drainage system account for the public drainage system;~~

~~(b ii) the public drainage system was repaired or maintained as approved by the drainage authority; or~~

~~(c iii) no repair or maintenance of the public drainage system was required under Minnesota Statutes, section 103E.705, subdivision 1, as determined by the public drainage authority; and~~

~~(2 b) the wetlands are not drained for conversion to:~~

~~(a i) platted lots;~~

~~(b ii) planned unit, commercial, or industrial developments; or~~

~~(c iii) any development with more than one residential unit per 40 acres, except for parcels subject to local zoning standards that allow family members to establish an additional residence on the same 40 acres.~~

~~If wetlands drained under this sub-item are converted to uses prohibited under subitem (2) during the ten-year period following drainage, the wetlands must be replaced under Minnesota Statutes, section 103G.222.~~

~~Documentation, such as aerial photographs, and United States Department of Agriculture records, or an affidavit of the landowner or another landowner with knowledge of the subject agricultural land may be required by the local government unit used as evidence for the exemption under this item.~~

C. For projects completed under this subpart, spoil must be placed and stabilized in a manner that minimizes wetland impacts without jeopardizing the stability of the ditch or contributing to the degradation of downstream water quality.

F D. The public drainage authority may, as part of the repair, install control structures, realign the ditch, construct dikes along the ditch, or make other modifications as necessary to prevent drainage of the wetland.

G E. Wetlands and public waters of all types that could be drained as a part of a public drainage repair project are eligible for the permanent wetlands preserve program established under Minnesota Statutes, section 103F.516. The board ~~shall~~ **must** give priority to acquisition of easements on ~~types 3, 4, and 5~~ **shallow marsh, deep marsh, and shallow open water** wetlands that have been in existence for more than 25 years on public drainage systems and other wetlands that have the greatest risk of drainage from a public drainage repair project.

~~H. Present and future owners of wetlands drained or filled without replacement under an exemption in item B or E may make no use of the wetland area after it is drained, excavated, or filled, other than as agricultural land, for at least ten years after the draining, excavating, or filling, unless it is first replaced under the requirements of Minnesota Statutes, section 103G.222. Also, for at least ten years, the wetland may not be restored for replacement credit. Except for land in public ownership, at the time of draining, excavation, or filling, the local government unit may require the landowner to record a notice of these restrictions in the office of the county recorder for the county in which the project is located. The local government unit may require recording a notice of these restrictions if it determines the wetland area drained is at risk of conversion to a nonagricultural use within ten years based on the zoning classification, proximity to a municipality or full service road, or other criteria as determined by the local government unit. In making a determination under this item, the local government unit must review the applicable comprehensive plan when evaluating the risk of conversion to a nonagricultural use and monitor and enforce the prohibition on using the area drained, filled, or excavated for a nonagricultural purpose for at least ten years. At a minimum, the recorded document must contain the name or names of the landowners, a legal description of the property to which the restrictions apply, a statement of the restrictions, the date on which the restrictions expire, the name of the local government that certified the exemption, if such occurred, the signatures of all owners, and an acknowledgment.~~

The language in item H above was relocated to the Scope subpart in this part.

Subp. ~~3 4.~~ **Federal approvals.** A replacement plan ~~for wetlands~~ is not required for ~~activities impacts~~ authorized under section 404 of the federal Clean Water Act, United States Code, title 33, section 1344, or section 10 of the Rivers and Harbors Act of 1899, United States Code, title 33, section 403, and regulations that meet minimum state standards under this chapter and that have been approved by the Board ~~of Water and Soil Resources~~, the Department of Agriculture, the Department of Natural Resources, and the Pollution Control Agency.

Subp. ~~4 5.~~ **Restored Wetlands restoration.** A replacement plan ~~for wetlands~~ is not required for:

A. ~~activities in a impacts associated with returning a wetland to the hydrologic conditions that existed prior to the restoration or creation activities required by the contract or easement, when the~~ wetland ~~was~~ restored or created for conservation purposes under a contract or easement providing the landowner with the right to ~~drain the restored or created~~ **return the** wetland **to pre-project conditions**. The landowner must provide a contract or easement conveyance ~~or affidavit~~ demonstrating that the landowner or a predecessor restored or created the wetland for conservation purposes but retained the right to subsequently drain the restored or created wetland **to the conditions that existed prior to restoration or creation**; or

B. ~~activities in a impacts associated with returning a wetland to the hydrologic conditions that existed prior to the restoration or creation activities when the~~ wetland was restored or created by a landowner without any assistance or financing from public agencies or private entities other than the landowner ~~and the wetland has not been used for wetland replacement or deposited in the state wetland bank~~. For purposes of this item, assistance by public agencies does not include consultation on project design or advice on the project's relationship to state or federal programs. The landowner must provide a contract, billing statements, or ~~an affidavit~~ **other evidence sufficient to** demonstrat**ing** that the landowner or a

predecessor restored or created the wetland without any assistance or financing from public agencies or private entities other than the landowner. The landowner must also provide sufficient information to determine that the area was not wetland prior to the restoration or creation activity.

~~Subp. 5. **Incidental wetlands.** A replacement plan for wetlands is not required for activities in wetland areas created solely as a result of:~~

~~A. beaver dam construction;~~

~~B. blockage of culverts through roadways maintained by a public or private entity;~~

~~C. actions by public or private entities that were taken for a purpose other than creating the wetland; or~~

~~D. any combination of items A to C.~~

~~Wetland areas created by beaver activities may be drained by removing those materials placed by beaver. Drainage is permitted by removing or moving materials blocking installed roadway culverts and related drainage structures. Additional excavation or removal of other materials is not permitted unless it can be shown by aerial photographs that the proposed activity will not drain or fill wetland that was there before the beaver dam was built or before the culvert became plugged.~~ **The preceding three sentences were relocated to the No-Loss part in this section. Beaver dams and blocked culverts (items A & B) were also relocated to No-Loss.**

~~Wetland areas may be drained, excavated, or filled if the landowner can show that the wetland was created solely by actions, the purpose of which was not to create the wetland. Impoundments or excavations constructed in nonwetlands solely for the purpose of effluent treatment, storm water retention, soil and water conservation practices, and water quality improvements, and not as part of a wetland replacement process that may, over time, take on wetland characteristics, are also exempt.~~ **The preceding two sentences were relocated to the Scope part in the Purpose and Definitions section.**

Subp. 6. Utilities; public works.

A. A replacement plan ~~for wetlands~~ is not required for:

(1) new placement or maintenance, repair, enhancement, or replacement of existing utility or utility-type service, including pipelines, if:

(a) the direct and indirect impacts of the proposed project have been avoided and minimized to the extent possible; and

(b) the proposed project significantly modifies or alters less than one-half acre of wetlands;

(2) ~~activities associated with the operation, routine maintenance, or emergency repair of existing utilities and public work structures, including pipelines, provided the activities do not result in additional wetland intrusion or additional draining or filling of a wetland either wholly or partially; or~~

The language in item 2 above was relocated to the No-Loss part in this section.

(3) repair and updating of existing individual subsurface sewage treatment systems necessary to comply with local, state, and federal regulations.

B. For maintenance, repair, and replacement, the local government unit may issue a seasonal or annual exemption certification approval or the utility may proceed without local government unit certification approval if the utility is carrying out the work according to approved best management practices. Work of an emergency nature may proceed as necessary and any ~~drain or fill activities shall~~ impacts must be addressed with the local government unit after the emergency work has been completed.

Subp. 7. Forestry. A replacement plan ~~for wetlands~~ is not required for:

~~A. temporarily crossing or entering a wetland to perform silvicultural activities, including timber harvest as part of a forest management activity, so long as the activity limits the impact on the hydrologic and biologic characteristics of the wetland; the activity does not result in the construction of dikes, drainage ditches, tile lines, or buildings; and the timber harvesting and other silvicultural practices do not result in the drainage of the wetland or public waters; or~~

Item A was relocated to the No Loss part in this section.

~~B.~~ permanent access for forest roads across wetlands so long as the activity limits the impact on the hydrologic and biologic characteristics of the wetland; the construction activities do not result in the

access becoming a dike, drainage ditch, or tile line; ~~filling is impacts are~~ avoided wherever possible; and there is no drainage of the wetland or public waters. This exemption is for roads constructed for the primary purpose of providing access for the conduct of silvicultural activities.

~~Subp. 8. [Repealed, 32-SP-281]~~

Subp. ~~9~~ **8. De minimis.**

A. Except as provided in items B and C, a replacement plan ~~for wetlands~~ is not required for ~~draining, excavating, or filling impacting~~ the following amounts of wetlands as part of a project:

(1) ~~in a greater than 80 percent area, including Isanti County:~~

(a) 10,000 square feet ~~of type 1, 2, 6, or 7 wetland~~, except for white cedar and tamarack wetland ~~shallow marsh, deep marsh, shallow open water, open bog, coniferous bog, and coniferous swamp~~, outside of the shoreland wetland protection zone; ~~or~~

(b) 400 square feet ~~of type 1, 2, 6, or 7 wetland~~, except for ~~white cedar and tamarack wetland shallow marsh, deep marsh, shallow open water, open bog, coniferous bog, and coniferous swamp~~, outside of the building setback zone, as defined in the local shoreland management ordinance, but within the shoreland wetland protection zone. This amount may be increased to 1,000 square feet by the local government unit if the wetland is isolated and determined to have no direct surficial connection to the public water;

~~(c) 100 square feet of type 3, 4, 5, 8, and white cedar and tamarack wetland shallow marsh, deep marsh, shallow open water, open bog, coniferous bog, and coniferous swamp outside of the building setback zone, as defined in the local shoreland management ordinance; or~~

~~(d) 20 square feet of any wetland, regardless of type, inside the building setback zone, as defined in the local shoreland management ordinance; or~~

(2) ~~in a 50 to 80 percent area:~~

(a) 5,000 square feet ~~of type 1, 2, 6, or 7 wetland~~, except for ~~white cedar and tamarack wetland shallow marsh, deep marsh, shallow open water, open bog, coniferous bog, and coniferous swamp~~, outside of the shoreland wetland protection zone and outside of the 11-county metropolitan area;

(b) 2,500 square feet ~~of type 1, 2, 6, or 7 wetland~~, except for ~~white cedar and tamarack wetland shallow marsh, deep marsh, shallow open water, open bog, coniferous bog, and coniferous swamp~~, outside of the shoreland wetland protection zone and inside the 11-county metropolitan area; ~~or~~

(c) 400 square feet ~~of type 1, 2, 6, or 7 wetland~~, except for ~~white cedar and tamarack wetland shallow marsh, deep marsh, shallow open water, open bog, coniferous bog, and coniferous swamp~~, outside of the building setback zone, as defined in the local shoreland management ordinance, but within the shoreland wetland protection zone;

~~(c) 100 square feet of type 3, 4, 5, 8, and white cedar and tamarack wetland shallow marsh, deep marsh, shallow open water, open bog, coniferous bog, and coniferous swamp outside of the building setback zone, as defined in the local shoreland management ordinance; or~~

~~(d) 20 square feet of any wetland, regardless of type, inside the building setback zone, as defined in the local shoreland management ordinance; or~~

(3) ~~in a less than 50 percent area:~~

(a) 2,000 square feet of ~~type 1, 2, or 6 wetland~~ ~~seasonally flooded basin, sedge meadow, fresh wet meadow, wet to wet-mesic prairie, shrub carr, alder thicket or floodplain forest~~ outside of the shoreland wetland protection zone and outside the 11-county metropolitan area;

(b) 1,000 square feet of ~~type 1, 2, or 6 wetland~~ ~~seasonally flooded basin, sedge meadow, fresh wet meadow, wet to wet-mesic prairie, shrub carr, alder thicket, or floodplain forest~~ outside of the shoreland wetland protection zone and inside the 11-county metropolitan area;

(c) 400 square feet of ~~type 1, 2, or 6 wetland~~ ~~seasonally flooded basin, sedge meadow, fresh wet meadow, wet to wet-mesic prairie, shrub carr, alder thicket, or floodplain forest~~ outside of the the building setback zone, as defined in the local shoreland management ordinance, but within the shoreland wetland protection zone; ~~or~~

(d) 100 square feet of ~~type 7 wetland coniferous bog, hardwood swamp, and coniferous swamp~~ outside of the building setback zone, as defined in the local shoreland management ordinance; ~~or~~
(c) 100 square feet of ~~type 3, 4, 5, 8, and white cedar and tamarack wetland shallow marsh, deep marsh, shallow open water, open bog, coniferous bog, and coniferous swamp~~ outside of the building setback zone, as defined in the local shoreland management ordinance; or
(d) 20 square feet of ~~any wetland, regardless of type,~~ inside the building setback zone, as defined in the local shoreland management ordinance.;

~~(4) statewide:~~

~~(a) 100 square feet of type 3, 4, 5, 8, and white cedar and tamarack wetland outside of the building setback zone, as defined in the local shoreland management ordinance; or~~

~~(b) 20 square feet of wetland, regardless of type, inside the building setback zone, as defined in the local shoreland management ordinance.~~

Sub-item 4, a and b, were relocated to the de minimis amounts listed under each presettlement area in sub-items 1, 2, and 3 to improve clarity.

B. The amounts listed in item A may not be combined on a project.

C. This exemption no longer applies to a landowner's portion of a wetland when the proposed project impact area and the cumulative area of the landowner's portion drained, excavated, or filled since January 1, 1992, is the greater of:

- (1) the applicable area listed in item A, if the landowner owns the entire wetland;
- (2) five percent of the landowner's portion of the wetland; or
- (3) 400 square feet.

~~D. This exemption may not be combined with another exemption on a project.~~

~~E D.~~ Property may not be subdivided solely to increase the amounts listed in item A or to gain exemptions.

~~F. For purposes of this subpart, for wetlands greater than 40 acres, the wetland type may be determined to be the wetland type with the deepest water regime within the wetland and within 300 feet of the impact.~~

~~G E.~~ For purposes of this subpart, the 11-county metropolitan area consists of the counties of Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Sherburne, Washington, and Wright.

Subp. ~~10 9.~~ **Wildlife habitat.** A replacement plan ~~for wetlands~~ is not required for:

A. ~~excavation or the associated deposition of spoil impacts~~ within a wetland for the primary purpose of a wildlife habitat improvement project, if:

- (1) the ~~total impact area of deposition, and excavation if within the permanently and semipermanently flooded areas of type 3, 4, or 5 wetlands,~~ does not exceed five percent of the wetland area or one-half acre, whichever is less, and the spoil is stabilized and permanently seeded with ~~native,~~ noninvasive species to prevent erosion;
- (2) the project does not have an adverse ~~impact effect~~ on any species designated as endangered or threatened under state or federal law; and
- (3) the project will provide wildlife habitat improvement as certified by the soil and water conservation district or technical evaluation panel using the "Wildlife Habitat Improvements in Wetlands: Guidance for Soil and Water Conservation Districts and Local Government Units in Certifying and Approving Wetland Conservation Act Exemption Proposals, Minnesota Interagency Wetlands Group, December 2000" or similar criteria approved by the board; or

B. duck blinds.